

## TITLE 24--HOUSING AND URBAN DEVELOPMENT

### SECRETARY FOR COMMUNITY PLANNING AND DEVELOPMENT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

#### PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

##### Subpart D—Uses of Grant Funds

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##### Subpart D—Uses of Grant Funds

###### Sec. 574.300 Eligible activities.

(a) *General.* Subject to applicable requirements described in Secs. 574.310, 574.320, 574.330, and 574.340, HOPWA funds may be used to assist all forms of housing designed to prevent homelessness including emergency housing, shared housing arrangements, apartments, single room occupancy (SRO) dwellings, and community residences. Appropriate supportive services, as required by Sec. 574.310(a), must be provided as part of any HOPWA assisted housing, but HOPWA funds may also be used to provide services independently of any housing activity.

(b) *Activities.* The following activities may be carried out with HOPWA funds:

(1) Housing information services including, but not limited to, counseling, information, and referral services to assist an eligible person to locate, acquire, finance and maintain housing. This may also include fair housing counseling for eligible persons who may encounter discrimination on the basis of race, color, religion, sex, age, national origin, familial status, or handicap;

(2) Resource identification to establish, coordinate and develop housing assistance resources for eligible persons (including conducting preliminary research and making expenditures necessary to determine the feasibility of specific housing-related initiatives);

(3) Acquisition, rehabilitation, conversion, lease, and repair of facilities to provide housing and services;

(4) New construction (for single room occupancy (SRO) dwellings and community residences only).

(5) Project- or tenant-based rental assistance, including assistance for shared housing arrangements;

(6) Short-term rent, mortgage, and utility payments to prevent the homelessness of the tenant or mortgagor of a dwelling;

(7) Supportive services including, but not limited to, health, mental health, assessment, permanent housing placement, drug and alcohol abuse treatment and counseling, day care, personal assistance, nutritional services, intensive care when required, and assistance in gaining access to local, State, and Federal government benefits and services, except that health services may only be provided to individuals with acquired immunodeficiency syndrome or related diseases and not to family members of these individuals;

(8) Operating costs for housing including maintenance, security, operation, insurance, utilities, furnishings, equipment, supplies, and other incidental costs;

(9) Technical assistance in establishing and operating a community residence, including planning and other pre-development or pre-construction expenses and including, but not limited to, costs relating to community outreach and educational activities regarding AIDS or related diseases for persons residing in proximity to the community residence;

(10) Administrative expenses:

(i) Each grantee may use not more than 3 percent of the grant amount for its own administrative costs relating to administering grant amounts and allocating such amounts to project sponsors; and

(ii) Each project sponsor receiving amounts from grants made under this program may use not more than 7 percent of the amounts received for administrative costs.

(11) For competitive grants only, any other activity proposed by the applicant and approved by HUD.

*(C) Limitations of assistance to primarily religious organizations—*

(1) *Provision of assistance.* (i) Assistance may be provided under this part by a grantee to a project sponsor that is a primarily religious organization if the primarily religious organization agrees to provide all eligible activities under this program in a manner that is free from religious influences and in accordance with the following principles:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion.

(B) It will not discriminate against any person applying for any of the eligible activities under this part on the basis of religion and will not limit such housing or other eligible activities or give preference to persons on the basis of religion.

(C) It will provide no religious instruction or counseling, conduct no religious services or worship, engage in no religious proselytizing, and exert no other religious influence in the provision of eligible activities under this part.

(ii) Assistance will not be provided to a project sponsor that is a primarily religious organization to construct or acquire a structure. Assistance may be provided to a project sponsor that is a primarily religious organization to rehabilitate or convert a structure owned by the organization, only as described in paragraph (c)(2) of this section.

(2) *Rehabilitation or conversion of structures owned by primarily religious organizations.* Grant amounts may be used to rehabilitate or convert a structure that is owned by a primarily religious organization, only if:

(i) The structure (or portion thereof) that is to be rehabilitated or converted with HUD assistance has been leased to an existing or newly established wholly secular organization (which may be established by the religious organization under the provisions of paragraph (c)(3) of this section).

(ii) The HUD assistance is provided to the secular organization (and not the religious organization) to make the improvements.

(iii) The leased structure will be used exclusively for secular purposes available to all persons regardless of religion.

(iv) The lease payments paid to the primarily religious organization do not exceed the fair market rent for the structure before the rehabilitation or conversion was done.

(v) The portion of the cost of any improvements that benefit any unleased portion of the structure will be allocated to, and paid for by, the religious organization.

(vi) The primarily religious organization agrees that if the secular organization does not retain the use of the leased premises for wholly secular purposes for the useful life of the improvements, the primarily religious organization will pay an amount equal to the residual value of the improvements to the original grantee from which the amounts used to rehabilitate or convert the building were derived. While the original grantee is expected to use this amount for eligible HOPWA activities, there is no requirement that funds received after the close of the grant period be used in accordance with the requirements of this part.

(3) *Assistance to a wholly secular private nonprofit organization established by a primarily religious organization.* (i) A primarily religious organization may establish a wholly secular private nonprofit organization to serve as a project sponsor. The secular organization may be eligible to receive all forms of assistance available under this part.

(ii) The secular organization must agree to provide eligible activities under this part in a manner that is free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(iii) The secular organization may enter into a contract with the religious organization to operate the housing assistance, supportive services and other eligible activities for the project. In such a case, the religious organization must agree in the contract to carry out its contractual responsibilities in a manner free from religious influences and in accordance with the principles set forth in paragraph (c)(1)(i) of this section.

(iv) The rehabilitation or conversion of structures are subject to the requirements of paragraph (c)(2) of this section.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]

**574.310 General standards for eligible housing activities.**

All grantees using grant funds to provide housing must adhere to the following standards:

(a)(1) *General.* The grantee shall ensure that qualified service providers in the area make available appropriate supportive services to the individuals assisted with housing under this subpart. Supportive services are described in Sec. 574.300(b)(7). For any individual with acquired immunodeficiency syndrome or a related disease who requires more intensive care than can be provided in housing assisted under this subpart, the grantee shall provide for locating a care provider who can appropriately care for the individual and for referring the individual to the care provider.

(2) *Payments.* The grantee shall ensure that grant funds will not be used to make payments for health services for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service:

(i) Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(ii) By an entity that provides health services on a prepaid basis.

(b) *Housing quality standards.* All housing assisted under Sec. 574.300(b) (3), (4), (5), and (8) must meet the applicable housing quality standards outlined below.

(1) *State and local requirements.* Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing.

(2) *Habitability standards.* Except for such variations as are proposed by the locality and approved by HUD, recipients must meet the following requirements:

(i) *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from hazards.

(ii) *Access.* The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.

(iii) *Space and security.* Each resident must be afforded adequate space and security for themselves and their belongings. An acceptable place to sleep must be provided for each resident.

(iv) *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.

(v) *Water supply.* The water supply must be free from contamination at levels that threaten the health of individuals.

(vi) *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.

(vii) *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliance while assuring safety from fire.

(viii) *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.

(ix) *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

(c) *Minimum use period for structures.*

(1) Any building or structure assisted with amounts under this part must be maintained as a facility to provide housing or assistance for individuals with acquired immunodeficiency syndrome or related diseases:

(i) For a period of not less than 10 years, in the case of assistance provided under an activity eligible under Sec. 574.300(b) (3) and (4) involving new construction, substantial rehabilitation or acquisition of a building or structure; or

(ii) For a period of not less than 3 years in the cases involving non-substantial rehabilitation or repair of a building or structure.

(2) Waiver of minimum use period. HUD may waive the minimum use period of a building or structure as stipulated in paragraph (c)(1) of this section if the grantee can demonstrate, to the satisfaction of HUD, that:

(i) The assisted structure is no longer needed to provide supported housing or assistance, or the continued operation of the structure for such purposes is no longer feasible; and

(ii) The structure will be used to benefit individuals or families whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, if the Secretary finds that such variations are necessary because of construction costs or unusually high or low family incomes.

(d) *Resident rent payment.* Except for persons in short-term supported housing, each person receiving rental assistance under this program or residing in any rental housing assisted under this program must pay as rent, including utilities, an amount which is the higher of:

(1) 30 percent of the family's monthly adjusted income (adjustment factors include the age of the individual, medical expenses, size of family and child care expenses and are described in detail in 24 CFR 813.102);

(2) 10 percent of the family's monthly gross income; or

(3) If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payments that is designated.

(e) *Termination of assistance--(1) Surviving family members.* With respect to the surviving member or members of a family who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death, housing assistance and supportive services under the HOPWA program shall continue for a grace period following the death of the person with AIDS. The grantee or project sponsor shall establish a reasonable grace period for continued participation by a surviving family member, but that period may not exceed one year from the death of the family member with AIDS. The grantee or project sponsor shall notify the family of the duration of their grace period and may assist the family with information on other available housing programs and with moving expenses.

(2) *Violation of requirements--(i) Basis.* Assistance to participants who reside in housing programs assisted under this part may be terminated if the participant violates program requirements or conditions of occupancy. Grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases.

(iii) *Procedure.* In terminating assistance to any program participant for violation of requirements, grantees must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. This process at minimum, must consist of:

(A) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(B) Permitting the participant to have a review of the decision, in which the participant is given the opportunity to confront opposing witnesses, present written objections, and be represented by their own counsel, before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(C) Providing prompt written notification of the final decision to the participant.

(Paragraph (c) approved by the Office of Management and Budget under control number 2506-0133)

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994; 61 FR 7963, Feb. 29, 1996]

#### **Sec. 574.320 Additional standards for rental assistance.**

(a) If grant funds are used to provide rental assistance, the following additional standards apply:

(1) *Maximum subsidy.* The amount of grant funds used to pay monthly assistance for an eligible person may not exceed the difference between:

(i) The lower of the rent standard or reasonable rent for the unit; and

(ii) The resident's rent payment calculated under Sec. 574.310(d).

(2) *Rent standard.* The rent standard shall be established by the grantee and shall be no more than the published section 8 fair market rent (FMR) or the HUD-approved community-wide exception rent for the unit size. However, on a unit by unit basis, the grantee may increase that amount by up to 10 percent for up to 20 percent of the units assisted.

(3) *Rent reasonableness.* The rent charged for a unit must be reasonable in relation to rents currently being charged for comparable units in the private unassisted market and must not be in excess of rents currently being charged by the owner for comparable unassisted units.

(b) With respect to shared housing arrangements, the rent charged for an assisted family or individual shall be in relation to the size of the private space for that assisted family or individual in comparison to other private space in the shared unit, excluding common space. An assisted family or individual may be assigned a pro rata portion based on the ratio derived by dividing the number of bedrooms in their private

space by the number of bedrooms in the unit. Participation in shared housing arrangements shall be voluntary.

[57 FR 61740, Dec. 28, 1992, as amended at 61 FR 7963, Feb. 29, 1996]

**Sec. 574.330 Additional standards for short-term supported housing.**

Short-term supported housing includes facilities to provide temporary shelter to eligible individuals as well as rent, mortgage, and utilities payments to enable eligible individuals to remain in their own dwellings. If grant funds are used to provide such short-term supported housing assistance, the following additional standards apply:

(a) *Time limits.* (1) A short-term supported housing facility may not provide residence to any individual for more than 60 days during any six month period. Rent, mortgage, and utilities payments to prevent the homelessness of the tenant or mortgagor of a dwelling may not be provided to such an individual for these costs accruing over a period of more than 21 weeks in any 52 week period. These limitations do not apply to rental assistance provided under Sec. 574.300(b)(5).

(2) *Waiver of time limitations.* HUD may waive, as it determines appropriate, the limitations of paragraph (a)(1) and will favorably consider a waiver based on the good faith effort of a project sponsor to provide permanent housing under subsection (c).

(b) *Residency limitations--*(1) *Residency.* A short-term supported facility may not provide shelter or housing at any single time for more than 50 families or individuals;

(2) *Waiver of residency limitations.* HUD may waive, as it determines appropriate, the limitations of paragraph (b)(1) of this section.

(c) *Placement.* A short-term supported housing facility assisted under this part must, to the maximum extent practicable, provide each individual living in such housing the opportunity for placement in permanent housing or in a living environment appropriate to his or her health and social needs.

(d) *Assistance to continue independent living.* In addition to the supportive services provided when an individual is relocated to a short-term supported housing facility, supportive services may be provided to individuals when they remain in their residence because the residence is appropriate to the needs of the individual. In the latter case, a rent, mortgage and utilities payments program assisted under this part shall provide, when reasonable, supportive services specifically designed to maintain the individual in such residence.

(e) *Case management services.* A program assisted under this section shall provide each assisted individual with an opportunity, if eligible, to receive case management services from the appropriate social service agencies.

(Paragraph (b) approved by the Office of Management and Budget under control number 2506-0133)

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]

**Sec. 574.340 Additional standards for community residences.**

(a) A community residence is a multiunit residence designed for eligible persons to provide a lower cost residential alternative to institutional care; to prevent or delay the need for such care; to provide a permanent or transitional residential setting with appropriate services to enhance the quality of life for those who are unable to live independently; and to enable such persons to participate as fully as possible in community life.

(b) If grant funds are used to provide a community residence, except for planning and other expenses preliminary to construction or other physical improvement for a community residence, the grantee must, prior to the expenditure of such funds, obtain and keep on file the following certifications:

(1) *A services agreement.* (i) A certification that the grantee will itself provide services as required by Sec. 574.310(a) to eligible persons assisted by the community residence; or

(ii) A certification that the grantee has entered into a written agreement with a project sponsor or contracted service provider to provide services as required by Sec. 574.310(a) to eligible persons assisted by the community residence;

(2) *The adequacy of funding.* (i) A certification that the grantee has acquired sufficient funding for these services; or

(ii) A certification that the grantee has on file an analysis of the service level needed for each community residence, a statement of which grantee agency, project sponsor, or service provider will provide the needed services, and a statement of how the services will be funded; and

(3) *Capability*. (i) A certification that the grantee is qualified to provide the services; or

(ii) A certification that the project sponsor or the service provider is qualified to provide the services.

[57 FR 61740, Dec. 28, 1992, as amended at 59 FR 17200, Apr. 11, 1994]